THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 16021 of 2005

DATE: 23-02-2007

Between :

M/s.Lakshmi Engg. And Marine Sevices,
Rep., by U.Surya Gangadhara Raju,
Visakhapatnam.

... Petitioner

And

Visakhapatnam Port Tust,
Rep., by its Chairman and Managing Director,
Visakhapatnam and 4 others.

... Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 16021 of 2005

O R D E R:

The petitioner, who claims to be the owner of a Landing Craft Utility Vessel (LCU-31), filed this writ petition with the following prayer.

> "Hence it is prayed that this Honourable Court in the interests of Justice be pleased to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus:
>
> i) declaring as illegal and arbitrary the actiono f the Respondents 1 and 2 in levying berth hire charges of the vessel LCU-31 belonging to the Petitioner without assessing the Gross Registered Tonnage of the vessel;
>
> ii) issue directions to the 3rd Respondent to issue Gross Registered Tonnage Certificate to the vessel LCU-31 belonging to the Petitioner;
>
> iii) issue directions to the Respondents 1 and 2 to compute berth hire charges in respect of the vessel LCU-31 belonging to the Petitioner on the basis of Gross Registered Tonnage Certificate issued by the 3rd Respondent;
>
> iv) declare the auction and sale of the vessel LCU-31 belonging to the Petitioner to the 5th Respondent as illegal, arbitrary and set aside the same;
>
> and pass such other or further order or orders as are deem fit and proper in the circumstances of the case."

In the affidavit filed in support of the writ petition, it is

pleaded as Under:

The petitioner purchased the vessel in question for a total consideration of Rs.18,25,000/- from one M/s. N.S.Ratnam and Sons Company, Chennai. It is stated that the vessel originally belonged to the Indian Navy, Eastern Naval Command, Visakhapatnam from whom M/s. N.S.Ratnam and Sons Company had purchased through the 4th respondent-Corporation on as is where is basis. It is claimed that as a matter of fact, the Gross Registered Tonnage (GRT) of the vessel was only 350 GRT at the time of the petitioner's purchase, however, on the basis of the statement of the petitioner's vendor the GRT was wrongly recorded as 450.40 GRT without taking into consideration the fact that the firing system, instrumentation and navigation system were removed from the decommissioned vessel.

Pursuant to the sale from M/s. N.S.Ratnam and Company, the vessel was delivered to the petitioner at fishing Harbour Jetty of Visakhapatnam Port Trust. It is relevant to note that the berth hire charges are liable to be paid to the Visakhapatnam Port Trust on the basis of the GRT of the particular vessel, which is prescribed for the vessels of less than 450 GRT, at the rate of Rs.0.10 paise per one hour.

Since the GRT of the petitioner's vessel was recorded as 450.40 GRT, the berth hire charges were calculated at the rate of Rs.184.70ps. per hour i.e. the rate, which is applicable to the vessel exceeding 450 GRT. The petitioner made a representation, dated 19-11-2002, requesting the 2nd respondent to reduce the rate of berth charges since the GRT at the time of its purchase was only 350 GRT. However, the petitioner was informed by the 2nd respondent by letter dated 27-11-2002 that his request cannot be accepted unless an authenticated document is produced from

the 3rd respondent-Director General of Shipping, Mercantile Marine Department, Ministry of Shipping, Roads, Transport and Highways. The petitioner was also called upon to pay a sum of Rs.12,29,843/- allegedly due as on 30-11-2002 towards berth hire charges. Since the petitioner was disputing the GRT, the vessel was got inspected by a Naval Architect, who issued a certificate certifying that the actual GRT of the vessel was 290 tons. On the basis of the same, the petitioner made a fresh representation to the 2nd respondent requesting to vary the berth charges. However, the said request was rejected on the ground that the petitioner failed to produce an authenticated document as required in the earlier letter dated 27-11-2002. The petitioner had accordingly approached the Union of India requesting to assess the GRT of the vessel in question. After lot of correspondence, the National Ship Design and Research Center (NSDRC), Ministry of Shipping, Government of India inspected the vessel and issued a certificate calculating the GRT at 350 Tons vide letter dated 28-08-2003. The said certificate was placed before the 2nd respondent on 01-10-2003 requesting to reconsider the petitioner's claim to reduce the berth charges. There was no response from the 2nd respondent, but on the other hand, steps were initiated by the 1st respondent through the

4th respondent-Corporation for sale of the vessel by auction scheduled on 19-12-2003. Aggrieved by the same, petitioner filed W.P.No.26318 of 2003, which was disposed of by this Court by order dated 09-01-2004 with a direction to the 1st respondent to consider the representation of the petitioner dated 01-10-2003 in the light of the certificate date

28-08-2003 issued by NSDRC and pass appropriate orders within

two months and till such time, not to finalize the auction conducted on 19-12-2003. Thereafter, the

2nd respondent by letter dated 03-04-2004 advised the petitioner to obtain the tonnage certificate from the Director General of Shipping to enable them to take further action.

In pursuance thereof, though the petitioner made several representations, the 3rd respondent failed to respond and therefore, the petitioner approached the 2nd respondent requesting to arrange to obtain the GRT certificate from the 3rd respondent. The petitioner had also paid the requisite fee of Rs.4,250/-. After lot of correspondence, the Surveyor in charge of the Mercantile Marine Department had inspected the vessel on 18-02-2005 in the presence of the Officials of the 1st respondent for assessing its tonnage. Finally, Mercantile Marine Department approved the GRT calculation of the vessel as 325 and forwarded the same to their Madras Office recommending to issue GRT certificate.

In the meanwhile, the 1st respondent had again initiated steps for auction of the vessel in question by inviting on line tenders fixing the opening date as 01-03-2005 and the closing date as 02-03-2005. The petitioner was also served with a notice dated 10-03-2005 calling upon to pay the outstanding dues of Rs.24,65,934/- towards berth charges together with interest at 18%, failing which the vessel in question would be sold in public auction. Aggrieved by the same, the petitioner filed W.P.No.5685 of 2005 and this Court by order dated 24-03-2005 granted interim stay of all further proceedings subject to the condition that the petitioner deposits a sum of Rs.7,50,000/- with the 1st respondent within a period of four weeks. Since the petitioner failed to comply with the said condition, the vessel was auctioned by the

4th respondent and the 5th respondent was the highest bidder for a sum of Rs.27,86,922.32p. Hence, this writ petition questioning the legality and validity of the aforesaid action of the respondents.

On behalf of the 1st respondent, a counter affidavit has been filed stating that the petitioner's vendor M/s N.S.Ratnam and Sons Company, Chennai was paying berth charges up to the disposal of the vessel by it on the basis of 450.40 GRT. The petitioner had purchased the vessel as per the said particulars given by the Flag Officer, Command-in-Chief of Indian Navy without any protest as to GRT and therefore, the petitioner is bound to pay the same berth charges as were being paid by its vendor. The petitioner's request to revise the berth charges taking the GRT of the vessel as 290 tons can be considered only on production of authenticated document from the 3rd respondent-Director General of Shipping, Mercantile Marine Department. Since the petitioner failed to comply with the interim order passed by this Court in W.P.No.5658 of 2005, the vessel was auctioned and the 5th respondent was declared as the highest bidder to whom the vessel was physically delivered on 01-05-2005. Thereafter, the 5th respondent sought permission for cutting the vessel and lifting the material. In the meanwhile, on an application made by A.P.Sampradaya Maschikara Samkya, the Andhra Pradesh State Pollution Control Board directed the 1st respondent to stop all the activities of ship breaking in the interest of public health and marine environment. It is also contended that the orders passed by this Court in the earlier writ petitions operate as *res judicata* and on that ground alone, the writ petition is liable to be dismissed in *limini*.

In the counter-affidavit filed by the 3rd respondent, it is

stated that on a request made by the respondents 1 and 2 having accepted the requisite fee paid by the petitioner the vessel in question was inspected by the Surveyor In-charge on 18.2.2005 and as per the approval granted by the Director General of Shipping vide letter dated 2.8.2005 the GRT of the vessel in question is 419 tons and net tonnage is 126 tons. The same was communicated to the petitioner by Surveyor In-charge of Mercantile Marine Department by letter dated 5.8.2005 and the respondents 1 and 2 were also informed of the same by letter dated 19.8.2005.

The 5th respondent who is the auction purchaser filed a separate counter-affidavit stating that he was the successful bidder for purchase of vessel in question as scrap and the total cost was paid within the time stipulated. In spite of the same, the 5th respondent could not proceed with the work on the vessel in view of the disputes raised by the writ petitioner.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner vehemently contended that the action of the respondents in levying the berth charges taking the GRT of the vessel as more than 450 tons and ultimately putting the vessel to auction for non-payment of the berth charges is arbitrary and illegal since the certificate issued by the 3rd respondent shows that the GRT of the vessel in question is only 325 tons.

From the facts narrated above, it is clear that the whole dispute relates to the liability of the petitioner for payment of the berth hire charges to the respondents 1 and 2. It is not in dispute that the berth hire charges are required to be paid as per the scales of rates fixed by Visakhapatnam Port Trust on the basis

of GRT of the concerned vessel. Whereas the petitioner claims that the GRT of the vessel in question being less than 450 tons the petitioner is liable to pay hire charges at the rate of 10 ps. per one hour, the 2nd respondent demanded the charges at the rate of Rs.184.70 ps per hour on the ground that the GRT of the vessel in question exceeds 450.

It is not in dispute that the 3rd respondent – Director General of Shipping, Mercantile Marine Department, Ministry of Shipping, Road Transport and Highways is the competent authority to approve the gross and net registered tonnage of the ships to be registered under the Mercantile Shipping Act, 1958 and the tonnage certificates are required to be issued through Mercantile Marine Department only.

Since the petitioner disputed the GRT of the vessel in question as recorded in the Registers maintained by the 1st respondent, the matter was referred to the Mercantile Marine Department and while the proceedings for assessing the gross tonnage of the vessel were still under process, the 2nd respondent had brought the vessel in question to auction for recovery of the amounts allegedly due from the petitioner towards the berth hire charges. At that stage, this writ petition was filed seeking a declaration that the action of the respondents is arbitrary and illegal and also seeking direction to the 3rd respondent to issue Gross Registered Tonnage Certificate to the vessel in question.

It is to be noted that during the pendency of this writ petition the vessel in question was assessed by the concerned Surveyor of the 3rd respondent and the same was approved by the Director General of Shipping who is the competent authority.

In the counter-affidavit filed on behalf of the 3rd respondent

it is admitted that the approved gross tonnage of the vessel was 419 tons and the net tonnage was 126 tons. The competency of the 3rd respondent to assess the gross registered tonnage of the vessel in question as well as the fact that the assessment of GRT of vessel in question was approved by the 3rd respondent during the pendency of this writ petition has not been disputed by the respondents 1 and 2. Hence, GRT as approved by the 3rd respondent is binding on the respondents 1 and 2 and there is no justifiable reason to ignore the same while determining the liability of the petitioner for payment of berth hire charges.

It is relevant to note that during the pendency of this writ petition, due to the damage caused to the vessel the same was capsized and shrunk into fishing harbour waters on 29.5.2005. In the circumstances, though the 5th respondent was the successful bidder in the auction, no further steps could be taken for lifting the material. At any rate, since by the date of the auction the Gross Registered Tonnage of the vessel in question was not assessed by the competent authority, the respondents 1 and 2 cannot be found fault with in proceeding with the auction of the vessel for recovery of the alleged amounts due as per the determination already made. Hence, the auction in favour of the 5th respondent cannot be declared to be either arbitrary or illegal. However, having regard to the fact that as on today the GRT of the vessel has been assessed and approved by the

3rd respondent - competent authority which admittedly is less than 450 GRT, I am of the opinion that the liability of the petitioner requires reconsideration on the basis of the GRT as approved by the 3rd respondent.

Though it is true that normally this Court does not entertain

a writ petition to resolve the contractual disputes, the law is fairly well-settled that there is no absolute bar to grant relief in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India even with regard to disputes arising out of contract when the impugned action of the State or its instrumentality is found to be vitiated on account of arbitrariness or violative of the fair procedure on the basis of the admitted facts.

In the circumstances, I deem it appropriate to dispose of the writ petition with a direction to the respondents 1 and 2 to determine the berth hire charges payable by the petitioner in respect of the vessel LCU-31 afresh on the basis of the Gross Registered Tonnage Certificate issued by the

3rd respondent and communicate the same to the petitioner as expeditiously as possible preferably within a period of eight weeks from the date of receipt of this order. Till such time, no coercive steps shall be taken against the petitioner on the basis of the determination already made.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. 23-02-2007
KLP
Note:- CC in 3 days.